IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

THURSDAY, THE NINTH DAY OF SEPTEMBER
TWO THOUSAND AND FOUR

PRESENT

THE HON'BLE MR JUSTICE V.V.S.RAO

WRIT PETITION NO.6397 of 2004

Between:

Ch.Muthayala Rao, S/o Late Appanna, 63 years,
R/o 9-5-42/1, Peethalavanipallam, Visakhapatnam.

...PETITIONER

AND

The Visakhapatnam Municipal Corporation, rep.by its Commissioner,
Visakhapatnam.

...RESPONDENT

Petition under Article 226 of the Constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court may be pleased to issue Writ or Order or direction more in the nature of Mandamus declaring the action of the respondents in taking steps to demolish the first Floor of the House bearing No.9-5-42/1, situated at Peethalavanipalem, Visakhapatnam, Visakhapatnam District pursuant to the notice under U.C.No.268/04/ACP-II dated 22-03-2004 as illegal and void and consequently direct the respondent not to demolish the same.

Counsel for the Petitioner: MR.K.BATHI REDDY

Counsel for the Respondent: MR.T.S.VENKATA RAMANA

The Court made the following:

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ORDER:

The petitioner seeks a writ of Mandamus declaring the action of the respondent namely Visakhapatnam Municipal Corporation in taking steps in demolishing the first floor of the house bearing No.9-5-42/1, Peethalavanipalem, Visakhapatnam as illegal and arbitrary. This Court while admitting the Writ Petition directed the respondent to maintain *status quo*. The matter has again come up for further orders in the miscellaneous application. At that stage itself, the matter was heard finally with the consent of learned counsel.

The petitioner states that the land he owns is less than 100 square yards and therefore, no permission is required for construction of the house and that he has constructed it in the year 1987. The petitioner however does not dispute that by impugned notice, dated 22.03.2004, the respondent-Corporation while requesting the petitioner to produce a copy of the building permit asked the petitioner to show cause as to why action should not be initiated under sub section (2) of Section 452 of the Hyderabad Municipal Corporation Act, 1955. The petitioner also does not dispute that immediately after receiving the notice, he submitted explanation. Therefore, the petitioner ought to have waited for further action by the respondent. Instead of doing so, apprehending demolition, the petitioner approached this Court.

As the petitioner's explanation, dated 23.03.2004 to the show cause dated 22.03.2004 has not yet been disposed of, this Court without expressing any opinion directs the respondent to pass appropriate orders for considering the explanation submitted by the petitioner. It shall also be open to the petitioner to submit further explanation and also file necessary documents in support of his case. Till the representation is disposed of, no coercive steps shall be taken against the petitioner.

The Writ Petition, with the above observations and directions, is disposed of.

(V.V.S.RAO, J)

9th September 2004

RRB

ASSISTANT REGISTRAR

//True Copy//

SECTION OFFICER

Copy To:

1. The Commissioner, Visakhapatnam Municipal Corporation, Visakhapatnam.
2. Two CD copies.